

JUDGE PAULEY

12 CIV 1751

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

J-UP INTERNATIONAL CO., LTD.,

Plaintiff,

-against-

COMPLAINT

Case No.

BROOKS FITCH APPAREL GROUP, LLC,

Defendant.

Plaintiff, as and for its Complaint against the defendant, alleges that:

1. Plaintiff is a business corporation organized and existing under the laws of the sovereign nation of Taiwan and maintains its principal office in Taiwan.
2. Defendant is a limited liability company organized under the laws of the State of New York that maintains its principal office at 1370 Broadway, Suite 1100, New York, whose members are citizens of the United States.
3. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1332 because this is an action between a citizen of a foreign state and a citizen of the United States where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.
4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a) because the defendant resides in this judicial district.



FIRST CLAIM FOR RELIEF - GOODS SOLD AND DELIVERED

5. On or about March 16, 2011, defendant placed orders with plaintiff for quantities of textiles.

6. In July 2011, plaintiff sold and delivered to defendant quantities of textiles at the following agreed prices:

| <u>Invoice No.</u> | <u>Delivery Date</u> | <u>Price</u> |
|--------------------|----------------------|--------------|
| INV1101011 | 7/11/2011 | \$62,390.40 |
| INV1102001 | 7/19/2011 | \$63,360.00 |
| | TOTAL: | \$125,750.40 |

7. Defendant accepted and retained the goods sold and delivered to it without objection.

8. Plaintiff has demanded that defendant remit payment in full.

9. Defendant has failed to remit any payment.

10. By virtue of the foregoing, plaintiff is entitled to judgment against defendant in the amount of \$125,750.40 for goods sold and delivered, plus interest thereon.

SECOND CLAIM FOR RELIEF - BREACH OF CONTRACT

11. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 10 above with the same force and effect as if set forth in full herein.

12. By virtue of the foregoing, plaintiff is entitled to judgment against defendant in the amount of \$125,750.40 for breach of contract, plus interest thereon.

THIRD CLAIM FOR RELIEF – ACCOUNT STATED

13. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 12 above with the same force and effect as if set forth in full herein.

14. On or about December 22, 2012, an account was stated by plaintiff in the amount of \$125,750.40.

15. The account was delivered to, accepted, and retained by defendant without objection.

16. That no part thereof has been paid, although due and duly demanded, and there is now due and owing from defendant to plaintiff \$125,750.40 together with interest thereon.

17. Plaintiff is entitled to judgment in the amount claimed on the basis of an account stated, plus interest thereon.

FOURTH CLAIM FOR RELIEF – QUANTUM MERUIT – IN ALTERNATIVE

18. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 17 above with the same force and effect as if set forth in full herein.

19. By virtue of the foregoing, defendant has been unjustly enriched.

20. Plaintiff is entitled to all necessary and proper remedies in the nature of restitution, including but not limited to equitable tracing, imposition of a constructive trust, an accounting, subrogation, and/or an equitable lien.

WHEREFORE, plaintiff demands judgment against defendant as follows:

- A. On the First, Second, and Third Claims for Relief, awarding plaintiff damages of \$125,750.40 plus interest thereon;
- B. On the Fourth Claim for Relief, granting plaintiff such equitable remedies in restitution as may be necessary to provide plaintiff with adequate relief, including equitable tracing, imposition of a constructive trust, an accounting, subrogation, and/or an equitable lien; and
- C. Granting plaintiff such other and further relief as the Court deems just and proper.

Dated: New York, New York
March 8, 2012

LAW OFFICES OF
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